

Residential Tenancies Tribunal

Application 2022-0617-NL

Decision 22-0617-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 13-September-2022
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlord submitted affidavits (LL#01 and LL#02) with her application stating that she had served the tenants with notice of the hearing, by posting the notices to their front door, by email and by prepaid registered mail. The tracking number with the prepaid registered mail confirms that the notice was sent to both of the tenants on 30-August-2022 and collected by both tenants on 31-August-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Compensation for damages \$1,418.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions.

Issue 1: Compensation for damages \$793.70

Relevant Submissions

8. The landlord submitted the rental agreement (LL#03) that she held with both tenants. Initially the tenants signed for a year from 01-December-2020 – 01-December-2021. Then the agreement became month to month. The tenant's pay \$1,250.00 a month for rent, which is due the 1st day of each month. On 13-January-2021 she said that they paid \$625.00 security deposit. She said that this deposit has been applied to these damages. She said that the tenants moved out the end of June 2022; around the 28th or 29th.
9. The landlord said that the tenants agreed with her, in writing, that she could retain the security deposit of \$625.00 for the damages incurred. The landlord said that the total damages is \$1,418.70. She is claiming \$793.70 from the tenants for the remainder of her damages as their security deposit of \$625.00 didn't cover the costs she incurred.
10. The landlord said that one of the tenants kept changing the time for the walk through and on the date of the scheduled walk through he said he was sick. The other tenant was out of province, when the time came for the walk through, so he sent his girlfriend to do the walk through with the landlord.
11. The landlord said that there was no condition report completed when the tenants moved in. She said she had originally purchased the house for herself in the spring of 2019. She said she had completely remodeled the kitchen and put in new cabinets, she had replaced the flooring, purchased new kitchen appliances as well as a washer and dryer. She said she put in new carpet upstairs and painted throughout the entire house. She said that she didn't live there long and it was sitting empty for about 6 months, at that time she decided to rent it.
12. The landlord said that the tenants had a cat and the cat had done damages. After the walk through she spoke with both of the tenants and discussed the damages. They were both in agreement with her retaining the security deposit, but they wouldn't consider payment for the other damages.
13. The landlord said that the upstairs carpet was threaded by the cat and smelled of cat pee. She provided pictures (LL#04 – LL#08) showing the carpet which is badly damaged. She also provided a receipt for the replacement for \$1,040.80. The landlord is seeking \$1,040.00 for the carpet.
14. The landlord said that there was a trap door in the hardwood in the main part of the house. She provided a picture of the main area which shows that when the tenants took

occupancy, the trap door is the same condition and coloring as the rest of the floor (LL#10). She also provided pictures (LL#11 – LL#19) showing the badly stained floor, it is stained dark. She said that the smell in the flooring was atrocious. She tried multiple cleaning products and in the end they had to remove the trap door and her father took it and pressure washed it. She is claiming \$105.00 for the time they worked on cleaning this flooring. She said it took them 5 hours for the cleaning of the flooring.

15. The landlord said that the oven was in really bad shape. She said it appeared to her that they cooked directly on the rack and not using a cooking sheet. She said it appeared that they never cleaned the oven. She provided pictures of the inside of the oven (LL#20 – LL#24). She is claiming 4 hours for the time required to clean for a total of \$84.00.
16. The landlord has submitted the cost of the cleaning products she required for the stove and the flooring, as follows:
 - Shoppers (LL#25) \$7.33
 - Shoppers (LL#26) 4.38
 - Kent (LL#27) 32.04
 - Dollarama (LL#28) 1.73
 - Total \$45.48
17. The landlord said that the cat apparently went through the window screen and got outside. She believes that the tenants then kept that window closed but then the cat scratched her way through the second window screen. She provided pictures (LL#29) and a receipt for \$52.90 for the cost of replacing the screens (LL#30).

Analysis

18. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

19. The landlord has proven through her testimony and evidence that her carpet was damaged beyond repair. She said that the carpet was new in 2019 and the damage is reported in 2022 making the carpet 3 years old. According to our policy carpet should last 10 years, this carpet should still have use for 7 more years. The landlord will be compensated with depreciation factored in, she therefore will receive 7/10's or 70% of her cost. $70\% \text{ of } \$1,040.00 = \728.00 . The tenants shall reimburse the landlord \$728.00 for the cost of new carpet.
20. The landlord's claim for personal labor to clean the hardwood trap door and the time required to clean the oven are also supported by her evidence. Both of these areas had significant damage, I accept the landlord's claim that the cleaning required 9 personal labor hours, as this board compensates personal labor at a rate of minimum wage + \$8.00 totaling \$21.20. The landlord will be compensated 9 hours x \$21.20 = \$190.80. The landlord had claimed \$189.00 and will therefore be awarded this lesser amount. The tenants shall reimburse the landlord \$189.00 for the cost of personal labor.
21. The landlord's claim for the cleaning products is supported by her evidence of the damages as well as the receipts submitted. I find that the tenants shall reimburse the landlord \$45.48 for the cost of cleaning supplies.
22. The landlord provided photographs and receipts to show the damages and cost of installing new screens. Windowscreenspros.com estimate the life expectancy of a mesh window screen to be 5 years. Assessing these screens at 3 years old would determine that the screens should last another 2 years. $2/5\text{ths or } 40\% \times \$52.90 = \$21.26$. I find that the tenant's shall reimburse the landlord \$21.26 for the cost of the window screens.
23. The tenants have already agreed that the landlord may retain the \$625.00 security deposit against the damages to the house. The tenants shall pay to the landlord \$358.74, as follows:

- Carpet \$728.00
- Labor for cleaning 189.00
- Cleaning supplies 45.48
- Screen replacement 21.26
- Less security deposit (625.00)
- Total \$358.74

Decision

24. The tenants shall pay to the landlord \$358.74 in compensation for damages.

Issue 2: Hearing expenses reimbursed \$20.00


25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#31) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

26. The tenants shall pay to the landlord \$378.74 in compensation for damages (\$358.74) and reimbursement of hearing expenses (\$20.00).

September 16, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office